

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of NAHID ABRAHAM and DEPARTMENT OF THE NAVY,
NAVAL AIR RESERVE, Point Mugu, CA

*Docket No. 99-296; Oral Argument Held October 5, 1999;
Issued June 27, 2000*

Appearances: *Nahid Abraham, pro se; Miriam D. Ozur, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of October 11, 1998.

On June 9, 1993 appellant, a 42-year-old accounting technician, filed a claim for benefits, alleging that she had sustained an emotional condition in the performance of duty and that he became aware that this condition was caused or aggravated by her employment on April 2, 1993. In a report dated June 17, 1993, Dr. Kevin K. Nishimori, Board-certified in internal medicine and pediatrics, stated that he examined appellant on April 21, 1993, when she claimed to be suffering from stress-related depression and anxiety, and was "very upset" about her work situation. Dr. Nishimori referred appellant to Dr. Jerry Burns, a psychiatrist, who submitted a report dated June 22, 1993. Dr. Burns concurred with Dr. Nishimori that appellant was experiencing work-related stress and stated that appellant indicated that a recent increase in her work load had significantly contributed to her symptomatology. He stated that appellant believed that the employing establishment had not provided her with the time required to complete her increased work load, and believed that no matter how hard she worked or how much she produced, it did not significantly affect or reduce her work load. Dr. Burns advised that appellant recently had to leave work due to severe recurrent anxiety attacks which she had tried to manage through social avoidance and depressive withdrawal.

By decision dated November 16, 1993, the Office denied appellant's claim, finding that she failed to establish that her claimed emotional condition was caused or aggravated by factors of her federal employment.

By letter dated December 16, 1993, appellant requested an oral hearing, which was held on July 28, 1994.¹

By decision dated November 3, 1994, the Office set aside the previous decision, finding that appellant had implicated a specific factor of employment, *i.e.*, that she was overburdened by an additional work load, and remanded for further development of the medical evidence in order to determine whether the accepted factors of her employment caused or contributed to her claimed emotional condition.

The Office referred appellant for a second opinion examination with Dr. John D. Barta, Board-certified in psychiatry and neurology. In a report dated January 12, 1995, Dr. Barta stated that appellant had the classic symptoms of a major depressive disorder, with depressed mood or loss of interest in pleasure and associated symptoms for at least two weeks. He advised that appellant's medical history indicated that the predominant cause of her emotional condition was her increased work load, which led to appellant's traits of introversion and feelings of inadequacy.

By letter dated January 24, 1995, the Office accepted the claim for major depression.²

In a report dated February 28, 1995, Dr. Charles E. Hollingsworth, Board-certified in psychiatry and neurology, advised that appellant's work-related emotional condition was aggravated as a result of being maltreated and ridiculed in front of her coworkers by her supervisor on January 23, 1995, as a result of which she went off work on January 30, 1995. Dr. Hollingsworth stated that appellant had been required to work in a hostile work environment in which her supervisor had personally demeaned and criticized her in front of other coworkers, damaging her self-esteem and causing her paranoia to become more intense and causing her depression to become more severe. He noted a marked degree of anxiety and a marked degree of depressed mood, with paranoid ideation based on the fact that she felt that her supervisor had been trying to drum her out of her work position and cause her emotional hurt so that she would leave the work environment. Dr. Hollingsworth concluded:

"I do not feel that this woman can concentrate well enough to perform her functions as an accountant or in any other capacity in terms of secretarial work or in any other capacity [in her division at the employing establishment] because of poor concentration, marked anxiety, extremely depressed mood, suspicious and paranoid ideation. I do not feel that she could take supervision. She is extremely suspicious and paranoid now and feels that she was picked on by her previous supervisor and was treated in a dehumanizing and derogatory manner. She would not be able to cooperate with others or work under deadlines, and I feel that her best interests would best be served by her being placed on permanent disability leave from her job description."

¹ Appellant did not return to work until February 8, 1994, when she returned to work for three days a week. She returned to full-time work on May 10, 1994.

² Appellant stopped working on January 30, 1995 and has not worked since that time.

On March 10, 1995 appellant filed a new claim based on an emotional condition. She claimed that she had returned to work in her preinjury position, despite her request to be transferred to another department because her supervisor unfairly pressured her and made humiliating comments, which aggravated her work-related emotional condition.

By letter dated September 12, 1995, the Office accepted the condition of major depression disorder, single episode severe without psychotic features.

In order to clarify the current state of appellant's psychiatric condition, the Office scheduled a second opinion examination for appellant with Dr. David P. Bedrin, Board-certified in psychiatry and neurology, for January 13, 1997, to determine whether appellant was still disabled by residuals from her accepted employment condition. After reviewing the statement of accepted facts and appellant's medical history, and stating findings on examination, Dr. Bedrin stated in a report dated January 15, 1997 that appellant had a personality disorder, not otherwise specified, which was not industrially related and preexisted her employment with the employing establishment. He advised that, based on psychological testing, appellant was either exaggerating her symptoms or malingering. Dr. Bedrin further stated:

“[Appellant] does appear to be temporarily disabled secondary to her depression; however, this appears to be, on the majority, from a nonindustrial basis secondary to problems which have arisen because of her nonindustrially-related personality disorder, not otherwise specified, secondary to her nonindustrially-related hypothyroidism, [and] nonindustrially-related diabetes.... The minor portion may be secondary to working conditions; however, this is not substantiated, and may be secondary to the way [appellant] was perceiving the normal events at work; but, she perceived them erroneously secondary to her nonindustrially-related personality disorder, not otherwise specified.”

In a report dated June 19, 1997, Dr. Hollingsworth noted his disagreement with Dr. Bedrin's opinion attributing appellant's condition to nonemployment-related causes and stated that appellant continued to have symptoms of depression, low self-esteem, frequent crying and anxiety due to maltreatment on the part of her supervisor, who ridiculed her in front of other employees. Dr. Hollingsworth advised that appellant's present condition continued to prevent her from working in any capacity and from returning to work at that time due to her work-related depression and anxiety.

The Office determined there was a conflict in the medical evidence condition between Dr. Bedrin and appellant's treating physician, Dr. Hollingsworth, regarding whether appellant still experienced residuals from her accepted psychiatric condition and referred appellant for a referee examination with Dr. Paul B. Bohn, Board-certified in psychiatry and neurology.

Dr. Bohn examined appellant on July 21, 1997. In a report dated September 30, 1997, he advised that her current symptoms included decreased mood, sadness, irritability and anhedonia. Dr. Bohn stated:

“[Appellant] states that her depression has now lasted for at least two years and she states that she was back at work full time from May 10, 1994 until

January 30, 1995 and that during that time she was closely scrutinized by her boss. She felt that the Captain did not help or protect her from the woman who was her supervisor. [Appellant] claims that this woman did not want her back after she went out on sick leave. She felt that her boss was critical, wanted her to cover things up, and that this boss was hard on her. She states that this boss made her put her desk in front of her office and would say things like, 'I [a]m worried about you. You are a sick person.' According to [appellant], this boss would ask, 'why I do n[o]t take disability retirement.' [Appellant] states that the boss did not appreciate her good work.

“[Appellant] also notes that she was not selected to be trained in a new computer system. She said that they trained a new person and not her, even though she was senior. She feels that she was not adequately trained with this new computer system. She also claims that the supervisor was more strict and unfair with her and did not appreciate her good work. The supervisor was critical, demanding, and at one point said, 'You should go back to the first grade because you do n[o]t know grammar.' (The patient began crying when relating this episode.) Appellant says that the last straw at work was the new 1995 computer system. She did not feel she was adequately trained to use this system and this created more work and more stress for her that she was unable to tolerate.”

Dr. Bohn diagnosed avoidant personality disorder with schizoid features and opined:

“I do not believe that [appellant] has an industrial psychiatric condition. I do believe she has major depressive disorder, recurrent and that she is currently in partial remission from her second episode. However, although her first episode was possibly triggered by her work, I do not believe this second episode is caused by work-related issues. One must realize that mood disorders are cyclical, episodes of illness alternate with periods of normalcy. To reiterate, I believe that her first major depressive episode was partly precipitated by the increased stress at work due to increased work load back in August 1992 when, after the resignation of another accounting technician and an accompanied hiring freeze, her work load was increased. The increased stress of that increase, may have contributed to the precipitation of her first major depressive episode. Prior to this 1992 to 1993 episode, she had no history of depression or work-related problems or difficulties with supervisors.... As stated above, currently [appellant] is in her second major depressive episode which began January 30, 1995, and for which she has been in treatment with Dr. Hollingsworth. However, the only relevant compensable factors relating to the precipitation of her second major depressive episode are that '[appellant] was required to use a computerized accounting system beginning January 23, 1995.’”

Dr. Bohn further stated that “An alleged incident that [appellant] attributes to her condition but has not been established as factual is ‘The claimant received no training or support from her supervisor or from a coworker who attended the training class in the new computerized accounting system.’ Since the latter has not been established as factual, and since complaints by

the patient of criticism, mistreatment, abuse, lack of support by bosses and coworkers have been labeled as ‘not established as factual’ or ‘noncompensable factors’ the current major depressive episode cannot be considered an industrial psychiatric condition.

“The use of computers [is] listed in the statement of the regular duties of an accounting technician. This, along with her extensive past work history of computer data entry jobs, would not support the fact that implementation of the new computerized accounting system on January 23, 1995, in and of itself was sufficient stress to cause her current major depressive disorder exacerbation.”

Dr. Bohn added that, “as stated earlier, *I do not believe that the cause of her current major depressive episode is work related. However, since she is still in a major depression, I do not believe that she would be able to do her described duties as an accounting technician.*” [Emphasis added]. He concluded that, although he did not believe that the current major depressive episode was precipitated by her work situation, he did believe that her initial major depressive episode was in part precipitated by the increased stress caused by her increased work load, and that she was not capable of full-time work.

On February 5, 1998 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the case had been referred to an independent medical examiner, Dr. Bohn, who opined that appellant’s current disability was due to nonindustrial factors, that she no longer suffered from any condition related to her federal employment, and that her condition was not due to the established compensable factors of employment. The Office concluded that Dr. Bohn’s opinion represented the weight of the medical evidence.

In response, appellant submitted a February 12, 1998 letter from Dr. Hollingsworth in which he stated, “[Appellant], who has been my patient for a number of years, hopes you will give further consideration to his conviction that he is still suffering damaging after affects [sic] of experiences he had while working [with the employing establishment].”

By decision dated September 14, 1998, the Office terminated appellant’s compensation effective October 11, 1998.

Prior to the oral argument, the Director filed a motion in support of the Office’s September 14, 1998 decision terminating compensation.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

The Board finds that the Office failed to meet its burden of proof to terminate appellant's benefits.

In the present case, there is a conflict in the medical evidence between Dr. Bedrin, Office referral physician adviser, and Dr. Hollinsworth, appellant's physician, as to whether appellant's current condition was causally related to factors of her federal employment, *i.e.*, work-related emotional condition of major depressive disorder. Dr. Hollingsworth, appellant's treating psychologist, has consistently maintained that appellant's current emotional condition was caused by specific factors of her federal employment. In contrast, Dr. Bedrin, the Office referral physician, opined that there was no conclusive evidence in the record establishing that appellant still experienced residuals from her work-related emotional condition and that appellant's current personality disorder resulted from nonemployment-related causes.

When such conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical examiner."⁵ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. In the instant case, Dr. Bohn's referee report failed to meet the burden of proof stated above, as his opinion disregarded a critical element of the statement of accepted facts, and is therefore fatally flawed. The primary question the Office asked Dr. Bohn was whether the claimant was capable of performing the described duties based on any work-related medical residuals. However, Dr. Bohn in his September 25, 1997 report does not accept the statement of accepted facts, in which the Office accepted the second occupational disease claim commencing January 30, 1995 for major depressive disorder, single episode, that was causally related to her employment. Dr. Bohn specifically stated, "as stated earlier, I do not believe that the cause of her current major depressive episode is work related. However, since she is still in a major depression, I do not believe that she would be able to do the described duties of an accounting technician."

Therefore, based on the failure of Dr. Bohn, the referee medical examiner, to abide by the statement of facts which stipulated that appellant's second occupational disease claim is causally related and because he concomitantly found that appellant suffers from her depressive condition and would be unable to withstand the stresses and strain of a full-time job, the Board finds that Dr. Bohn's referee medical report is fatally flawed.⁶ The Board therefore reverses the Office's September 14, 1998 decision terminating benefits, as Dr. Bohn's referee medical report, upon which the decision is based is insufficient to satisfy its burden of proof.

⁵ Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "[i]f there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." *See Dallas E. Mopps*, 44 ECAB 454 (1993).

⁶ The Board notes that the Director states in his memorandum that appellant's ongoing emotional condition is not causally related based on the Dr. Bohn's referee report but failed to acknowledge to the Board the nonacceptance of the second occupational disease claim by Dr. Bohn even though he found that the appellant continues to suffer from the condition accepted by the Office and is still unable to perform the duties of the accounting technician.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 14, 1998 is reversed.

Dated, Washington, D.C.
June 27, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member